

As revised, Rule 27(a)(1) requires that the petitioner provide a copy of the petition to any trial or appellate military judge whose decision, judgment, or order is the subject of the petition. The purpose of this requirement is to alert the judge or judges to the filing of the petition, a necessity because members of the lower court are not treated as respondents and are therefore not served. This revision conforms to revised Fed. R. App. P. 21(a)(1).

As revised, Rule 27(a)(2)(A) requires that the caption of the petition merely identify the moving party rather than the name of the judge or judges whose order is subject to challenge, as has been the practice in some cases. In this respect, the amendment clarifies that such judge or judges are not to be considered or treated as respondents.

Revised Rule 27(a)(2) (B) and (C) modifies those subsections to conform more closely to Fed. R. App. P. 21(a)(2) (B) and (C) in connection with the required contents of a petition for extraordinary relief. In substance, the revision does not deviate substantially from the Court's present Rule 27(a)(1).

In contrast with the Court's present Rule 27(a)(3), the revision adopts the federal practice of dispensing with separate briefs accompanying petitions for extraordinary relief. The submission of such multiple pleadings fosters redundancy and is inconsistent with the time-sensitive context in which such petitions are typically filed. Any necessary legal argument is properly contained in the explanation of why the writ should issue in subsection (a)(2)(B). In the event the Court deems supplemental briefing necessary following the submission of the petition and any answer, the revised rule affords ample authority to direct such briefings. See draft Rule 27(a)(3) (A) and (E). Should this revision be adopted, Rule 19(d) which is captioned "Time Limits" will have to be revised to delete reference to the submission of supporting briefs. References to submission of "any available record" in these rules is also unnecessary as such a requirement is imposed by Rule 27(a)(2)(C), as revised. Rule 25, which is captioned "When Briefs Are Required," will likewise have to be revised to omit reference to petitions for extraordinary relief.

Revised Rule 27(a)(3) has been drafted to conform more closely to Fed. R. App. P. 21(b). Subsections (a)(3) (B) and (E) are new. Subsections (a)(3)(C) clarifies the responsibilities of a trial or appellate military judge or judges whose decision, judgment, or order is the subject of a petition for extraordinary relief. It anticipates that the views of such judge

or judges will normally have been stated on the record or in an order in the usual course and that, as in a direct appeal, the lower court's interest in defending such an order will ordinarily be fulfilled by the prevailing party. Accordingly, in language adopted from Fed. R. App. P. 21(b)(4), it makes clear that such judge or judges are not expected to respond to a petition and have no right to respond except in the extraordinary instance where invited or ordered to do so by the Court. The Committee recognizes that there may be instances where the respondent chooses not to defend the decision of the trial or appellate military judge whose decision is the subject of the petition. *United States v. Harper*, 729 F. 2d 1216, 1217 (9th Cir. 1984) (noting refusal by government to defend, in a mandamus proceeding, order of district court). In such instances, the proposed rule permits that judge to request permission to respond on his own behalf. The Court has discretion whether to permit such a response by or on behalf of a judge.

It is the view of the Rules Advisory Committee that, due to the mobility of sitting military trial judges, as well as former military appellate judges, the Judge Advocates General are better situated than the Court to ensure that such judges are promptly notified of orders granting or denying extraordinary relief. Accordingly, in contrast with Fed. R. App. P. 21(b)(7), the revised Rule makes no provision for such service by the Court. See Rule 43(b).

As revised, Rule 27(b) eliminates, for the reasons set out above, the requirement that separate briefs accompany writ appeal petitions. As in the case of petitions filed in the first instance, writ appeal petitions should ordinarily contain ample legal analysis to permit disposition without further briefing. Should this revision be adopted, Rules 19(e) and 25 will have to be amended to omit reference to the submission of briefs in connection with writ appeal petitions.

Rule 27(a)(4) has been revised to preclude the submission of petitions for extraordinary relief by electronic means, including facsimile, except by authorization of the Clerk. When counsel in the field find it necessary to submit, by electronic means, a petition for immediate transmission to the Court, it should normally be transmitted to the Chief of the Appellate Defense Division or the Appellate Government Division, as appropriate, within the Office of the Judge Advocate General of petitioner's service, with copies to all named respondents and to any trial or appellate military judge whose decision, judgment, or order is the subject of the

petition, in accordance with subsection (a). Upon receipt, the appropriate Appellate Division will reproduce the submission and it will be filed by an appellate counsel appointed within such office in accordance with Rule 37.

Finally, Rules 19(d) and 19(e) have been amended to afford a preference in disposition to petitions for extraordinary relief and writ appeal petitions.

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**DATES:** Comments on the proposed changes must be received by July 21, 1997.

**ADDRESSES:** Forward written comments to Thomas F. Granahan, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442-0001.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, telephone (202) 761-1448 (x600).

Dated: May 14, 1997.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### Grant of Exclusive License

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Correction.

**SUMMARY:** In previous **Federal Register** notice (Vol. 62, No. 65, pages 16143-16144) Friday, April 4, 1997 make the following correction:

On Page 16143, at the bottom of the column chart (under the country titled "Portugal"), add the following Country, Application No., and Filed date:

Country	Application No.	Filed
Spain ..	(EP) 94926514.4	Aug. 17, 1994.

The above information was inadvertently omitted from the publication.

**ADDRESSES:** U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180-6199.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Mr. Phil Stewart (601) 634-4113.

**SUPPLEMENTARY INFORMATION:** None.

**Gregory D. Showalter,**

*Army Federal Register Liaison Officer.*

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